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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,988	11/16/2001	Margaret Henderson Hasse	8786	7943

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EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

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DATE MAILED: 04/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/993,988

Applicant(s)

HASSE ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,9 and 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6,7,9,11 and 13-20 is/are rejected.
- 7) ☒ Claim(s) 5 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

In view of the Appeal Brief filed on January 26, 2004, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Objections

Claim 7 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 7 is dependent upon canceled claim 10.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,7,9 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Balzar (5891123).

For claims 1, 7 (as best understood), 9 and 14, Balzar discloses a tampon wherein the tampon is made of absorbent material that is compressed into an absorbent member. The absorbent material is 10 and has surfaces and ends as claimed. The overwrap is 22 and is fluid wicking, has a skirt portion 48, substantially covers the exterior surface of the absorbent member as claimed, and permeates into an inner region as claimed. It is inherent in the disclosure of Balzar that the skirt portion extends about 2mm or 5mm from the withdrawal end of the absorbent material. About 50% of a person's finger is placed inside the skirt portion that extends past the withdrawal end and this inherently satisfies the claimed range of claims 7 and 14($\frac{1}{2}$ of a person's finger is more than 2mm or even 5mm in length). The withdrawal means for removal of the tampon is 88.

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Claims 16 – 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Taylor et al. (US 6,258,075).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

With respect to claim 16, Taylor et al. (hereinafter “Taylor”) discloses a process for making a tampon comprising providing an absorbent material having a first surface opposed to a second surface and an insertion end opposed to a withdrawal end (figure 2); providing a fluid wicking overwrap (col. 7, lines 9 – 13); creating a wrapped absorbent by substantially covering said first surface and said second surface of the absorbent material with said fluid wicking overwrap (col. 7, lines 9 – 13); said fluid wicking overwrap extending beyond said withdrawal end of the absorbent material to form a skirt portion (col. 8, lines 44 – 48; col. 9, lines 48 – 51; col. 11, lines 16 – 17 and 27 – 28 and figure 6); compressing said wrapped absorbent to form a compressed absorbent member having a vaginally insertable shape, said compressed absorbent member having an inner region and an exterior surface; wherein upon compression said fluid wicking overwrap substantially covers the exterior surface of the compressed absorbent member and substantially permeates the inner region of the compressed absorbent member as set forth in col.

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As to claim 17, Taylor discloses a process further comprising the step of providing a withdrawal means for removal of the tampon and attaching the withdrawal means to the wrapped absorbent prior to compression as set forth in col. 5, lines 60 – 65.

With reference to claim 18, Taylor discloses a process further comprising the step of providing an insertion means for insertion of the tampon and positioning said compressed primary absorbent within said insertion means as set forth in col. 13, lines 58 – 64.

With respect to claim 19, Taylor discloses a process further comprising the step of rolling the wrapped absorbent before compression as set forth in col. 6, lines 27 – 30.

As to claim 20, Taylor discloses a process wherein the skirt portion extends at least about 3mm from the withdrawal end as set forth in col. 8, lines 57 – 60.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

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under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 3 – 4, 6, 11 and 15, are rejected under 35 U.S.C. 103(a) as being unpatentable over Balzar (5891123) in view of Sheldon et al. (5084038).

For claim 6, the term "hydroentangled" is a product by process limitation and only the end structure that the process results in will be given patentable weight, not the manner in which it has been made. An overwrap with the same end structure can be made by different methods, so the limitation of hydroentangled does not recite any further structure to the overwrap, other than the overwrap itself.

For claims 3 – 4, 6 and 15, Balzar does not disclose that the overwrap can be made of natural and synthetic fibers in the claimed ratio (rayon/polyester). Balzar does list numerous materials that are suitable for the overwrap and does state that natural or synthetic are suitable, but Balzar does not disclose a combination of natural and synthetic fibers. Sheldon discloses a tampon that has an overwrap covering the absorbent material of the tampon (as is well known and old in the tampon art). Sheldon discloses that a particularly useful overwrap can be made of 15% rayon and 85% polyester. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Balzar with the preferred overwrap of Sheldon so that a more efficient overwrap with lower manufacturing costs can be obtained in the tampon of Balzar.

For claim 11, Balzar does not disclose that the overwrap is 100% rayon. Sheldon discloses a tampon that has an overwrap covering the absorbent material of the tampon (as is well known and old in the tampon art). Sheldon discloses that the overwrap can be made 100% rayon. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Balzar with a 100% rayon overwrap as disclosed by Sheldon. Rayon (being regenerated cellulose fibers) is cheaper than synthetic materials, is very biocompatible, and for these reasons one of ordinary skill in the art would find its use obvious.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Balzar (5891123) in view of Agyapong et al. (6554814). Balzar does not disclose the overwrap as being a rayon/polypropylene 50/50 blend. Agyapong discloses a tampon with an overwrap. The overwrap is disclosed as being particularly made from rayon, polyethylene, polypropylene, and blends of these materials. The statement "and blends of these materials" is broad and includes a blend of just rayon and polypropylene. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the overwrap of Balzar with a rayon/polypropylene overwrap as disclosed by Agyapong to obtain a good overwrap. With respect to the 50/50 blend, the examiner considers this to be a design choice that is within the purview of one of ordinary skill in the art. A rayon/polypropylene blend is known in the art, and arriving at an optimal ratio of the two materials involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 456, 105USPQ 233, 235 (CCPA 1955).

Allowable Subject Matter

Claims 5 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims filed January 26, 2004 have been fully considered but they are not persuasive.

With respect to the applicant's argument that Balzar does not disclose a fluid wicking overwrap substantially covering the first surface and the second surface, the examiner disagrees.

The applicant's arguments citing the differences between Balzar and the claimed invention seem to make a distinction between a beginning product (generally referred to as a pledget) and a finished product (generally referred to as a tampon) while the claim language is not supportive of this position.

The applicant states that Balzar does not disclose a fluid wicking overwrap substantially covering a first surface and a second surface of the absorbent material. The applicant further states that Balzar discloses a tampon comprising an absorbent member that is "positioned on top of and aligned with the cover" or "overlaid on the

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cover.” Next, the applicant states that at best, Balzar discloses an overwrap covering one surface of the absorbent member.

However, the examiner contends that Balzar does disclose these limitations as set forth in figure 6.

A “surface” is defined as an external part.

The examiner contends that Balzar has an upper surface (the outermost portion of the tampon disposed above reference character X) and a lower surface (the bottom portion of the tampon disposed above reference character X) and that both of these surfaces, which are opposed to one another, are substantially covered by the fluid wicking overwrap (22).

The applicant’s arguments are not commensurate with the scope of the claims because the applicant seems to rely on the differences in the formation of the tampon of Balzar versus that of the claimed invention for the basis of argument, yet the fact that the finished product of Balzar reads on the claimed invention is the position taken by the examiner. And, since there is no distinction between the two phases in the claim language, the examiner will maintain the current rejection.

In reply to the applicant’s argument that the combination of Balzar and Sheldon would defeat the problem that Balzar is attempting to solve, the examiner disagrees. The applicant initially references col. 7, lines 20 – 34 of Balzar in which Balzar states that it is possible to chemically treat or perforate a portion of the cover **if desired** (emphasis added). It is not necessary to alter to cover that provides the flexible finger sheath in any manner. Balzar has previously disclosed that the cover, which forms the

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flexible finger sheath, is constructed of materials that should be easily penetrated by menstrual fluid (col. 4, lines 24 – 27). Whether or not the flexible finger sheath is perforated is not the pending issue. The claim requires the fluid wicking overwrap (22) to extend beyond the withdrawal end of the absorbent material (figure 6) to form a skirt portion (48) and as previously stated in the rejection of claim 1, Balzar meets the claimed limitations. Additionally, Balzar has already disclosed the cover comprising natural or synthetic fibers as set forth in col. 4, lines 24 – 32. Sheldon is merely relied upon to provide the claimed ratios not to provide the essential teaching of the use of the natural and synthetic fibers. Therefore, Sheldon could not possibly defeat the teachings of Balzar since the Balzar reference itself teaches the same materials as Sheldon for use with the invention.

The same response holds true in reply to the applicant's argument of the Agyapong reference.

Applicant's arguments with respect to claims 16 – 20 have been considered but are moot in view of the new ground(s) of rejection.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
April 3, 2004


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